

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ALABAMA
3 SOUTHERN DIVISION

4 KATHRYN HENDRIX,

*

5 Plaintiff,

*

2:21-cv-300-MHH

6 vs.

*

February 6, 2023
11:00 a.m.7 CRC INSURANCE SERVICES, INC., *
et al.,

*

Birmingham, Alabama

8 Defendants.

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11 **TRANSCRIPT OF HEARING**
12 **BEFORE THE HONORABLE MADELINE HUGHES HAIKALA**
13 **UNITED STATES DISTRICT JUDGE**14 For the Plaintiff: Leslie A. Palmer
15 Cynthia F. Wilkinson16
17 For the Defendant: Jenna M. Bedsole
18 Kayla Michelle Wunderlich19 Court Reporter: Leah S. Turner, RMR, CRR
20 Federal Official Court Reporter

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1 This cause came to be heard and was heard on the
2 6th day of February 2023, before the Honorable Madeline Hughes
3 Haikala, United States District Judge, holding court for
United States District Court, Northern District of Alabama,
Southern Division, in Birmingham, Alabama.

4 Proceedings continued as follows:

5 P R O C E E D I N G S

6 (COURT CALLED TO ORDER.)

7 THE COURT: We are here this morning in case 21-cv-
8 300. This is Hendrix vs. CRC, and we are here for a discovery
9 conference.

10 Let me start just by asking you all to please update
11 the Court on the work that you all have accomplished in
12 discovery since we met in June of last year.

13 MS. PALMER: Your Honor, after we met in June of
14 last year, we had a brief conversation in the elevator,
15 Ms. Gill and myself, and believed at that point we had come to
16 some agreement on exchanging some documents.

17 After a month passed and we still had not received
18 the documents, I reached out to Ms. Bedsole, at which time I
19 received a response to Rule 37 letter that mostly stood by the
20 objections but did include counsel's position on certain
21 responses to interrogatories.

22 From that point, we let Ms. Bedsole know that we
23 intended to file a motion to compel, and we continued our
24 conversations back and forth and ultimately had over --

25 THE COURT: Let me interrupt you for a minute,

1 please. Tell me what you have received in discovery since we
2 met.

3 I understand that there are lots disputes. I'm
4 trying to understand what work has been done since we met last
5 June.

6 MS. PALMER: Yes, Your Honor. We have received a
7 number of emails. I think some are over the 3,000 range.
8 Most of these emails are related to either events like
9 networking-type events that the company was holding or our
10 client's issuance of insurance policies to her clients, which
11 included like a two-page email along with a very lengthy
12 insurance policy. So that's the majority of the number of
13 documents.

14 Since we filed the motion a couple of weeks ago, we
15 have received what appear to be portions of Mr. Segrest's
16 personnel file as well as a couple of specific documents that
17 we requested related to the agency split and like the
18 percentage of work assigned to each agent.

19 We also have received a couple of charts, one that
20 appears to be two jobs that were filled without any other
21 information related to whether those jobs were posted or how
22 many applications were received, and a chart related to
23 compensation structures, which I believe is just base
24 compensation.

25 And then we received one chart that appears to

1 indicate assignments of teams, like who was working under
2 Mr. Daugherty, which is the team that the plaintiff is on, and
3 who wasn't. But that's just the basic information.

4 And that is all that we have received.

5 MS. WILKINSON: And, Your Honor, we did a chart. I
6 will be happy to -- if you would like a copy and defense
7 counsel a copy, of what we got and what we did not get, which
8 may be helpful. I just wrote a note on that one.

9 THE COURT: Any depositions so far?

10 MS. PALMER: No, Your Honor. As of Friday we
11 received a notice of deposition from Ms. Bedsole for the
12 plaintiff's deposition, but we have not been able to schedule
13 any other depositions because of the outstanding discovery.

14 At this point we don't even have contact
15 information. We have no employee roster to show us who was on
16 her team or anything like that. The few individuals that were
17 listed on the initial disclosures are listed contact care of
18 counsel, and I think at least one of those is not a manager,
19 but we have no contact information beyond Ms. Bedsole.

20 And the initial disclosures, I think, only identify
21 four individuals.

22 THE COURT: Well, you're not planning to contact any
23 of these employees directly, are you?

24 MS. PALMER: The employees, we believe we would be
25 allowed to contact, yes, Your Honor. They are not covered

1 under the manager rule, and so we would like to be able to
2 contact them to see if they have discoverable information; and
3 if they do and they are not willing to talk to us directly,
4 then we would like to see about scheduling them for
5 depositions if we believe they have information necessary.

6 THE COURT: And you haven't scheduled a 30(b) (6)
7 deposition?

8 MS. PALMER: Correct.

9 THE COURT: Ms. Hendrix had some health issues. Is
10 she doing better?

11 MS. PALMER: She is. She is a hundred percent
12 healed and ready to participate in litigation.

13 THE COURT: Ms. Bedsole, let me hear the defendant's
14 version of where discovery is.

15 MS. BEDSOLE: Thank you, Your Honor. With our
16 initial disclosures, we did produce the plaintiff's personnel
17 file. We produced the employee handbook. We produced some
18 additional documents.

19 One of the issues in this case is the plaintiff
20 contends that she was excluded from meetings and was not
21 allowed to attend dinners or she was not invited to dinners.

22 We did a thorough search of her inbox and outbox and
23 produced almost over 3,000 emails which demonstrated that she
24 was not excluded.

25 In addition, one of the issues in this case relates

1 to what her job duties are as an inside broker versus an
2 associate broker. We have produced information related to her
3 duties. Again, those are included in some of the emails and
4 the attachments.

5 With respect to the personnel files, there is a
6 dispute about what -- we contend that -- and I believe this
7 was discussed in that elevator. We objected then to the
8 production of personnel files. We discussed that if they
9 identified a comparator, we could talk about it. They have
10 contended that Mr. Segrest is a comparator. We dispute that
11 fact. But we did produce portions of his personnel file.
12 Likewise, although we do not believe that her supervisor,
13 Corey Daugherty, is a comparator, we also produced a portion
14 of his personnel files.

15 They have asked for documents that simply don't
16 exist and we have tried to convey that. But regardless,
17 overall, I think we are over 4,000 documents that have been
18 produced.

19 Admittedly, Your Honor, we thought we had produced
20 verified responses. That's on us. We did not. We sent a
21 Rule 37 letter that outlines what our responses were going to
22 be. Admittedly, I should have double-checked and made sure
23 that those went out. They did not. And that is on me, Your
24 Honor.

25 So we stand before you. We believe that we have

1 conferred in good faith. We have some disputes that the
2 parties just can't agree on some of the scope.

3 We have produced the names of the team members. We
4 have produced information about those who worked within the
5 Birmingham office but were not on Ms. Hendrix's team. We
6 believe that the scope is based upon Ms. Hendrix's team, or
7 Corey Daugherty's team.

8 So we have a dispute over the scope of discovery in
9 this case, Your Honor.

10 THE COURT: Let's go back. Mr. Daugherty, you said
11 was Ms. Hendrix's supervisor, correct?

12 MS. BEDSOLE: That's correct, Your Honor.

13 THE COURT: What did you omit from his personnel
14 file when you produced it?

15 MS. BEDSOLE: We omitted health information. There
16 aren't any disciplinary records, so we stated that. I believe
17 we produced -- and I will submit to Your Honor the personnel
18 files don't look like a traditional personnel file. They are
19 in a system called Workday, so it provides a lot of
20 information with respect to title, date of hire, but it looks
21 more like a computer program than it does what we're used to
22 with individual papers that reflect the hire date or such.

23 THE COURT: So in that system, if somebody does
24 receive a disciplinary notice, whether it's a record of a
25 verbal warning or a written warning, do those appear in that

1 program or are they maintained elsewhere?

2 MS. BEDSOLE: Should be reflected in the program,
3 Your Honor. The program also sets forth the evaluations as
4 well, at least from a high level. It doesn't go into the
5 multiple pages of the evaluations, but it does state on there
6 meets expectations.

7 THE COURT: Where are the written evaluations
8 maintained?

9 MS. BEDSOLE: They are in a separate file,
10 electronic file.

11 THE COURT: Are there any paper files for the
12 employees?

13 MS. BEDSOLE: Not that I'm aware of, Your Honor.

14 THE COURT: So have you produced the evaluation
15 records for Mr. Daugherty?

16 MS. BEDSOLE: I don't believe we have produced the
17 entire evaluations, multipage evaluations, Your Honor.

18 THE COURT: Is that because you don't consider them
19 part of his personnel file?

20 MS. BEDSOLE: Well, we suggested that we produce
21 documents that related to any complaints that related -- were
22 the same or similar complaints raised by the plaintiff. We
23 reviewed and did not see any.

24 THE COURT: Give me the name again, please, of the
25 comparator.

1 MS. BEDSOLE: They have indicated that Clay Segrest
2 is a comparator, Your Honor. It is our opinion, our position,
3 that he is not. Ms. Hendrix was an inside broker. He was an
4 associate broker. They have different job duties. For
5 example, an inside broker doesn't have to travel. They do
6 serve clients, but they are not required to go out and solicit
7 new business like an associate broker does.

8 THE COURT: My understanding from reading the
9 complaint is that that's precisely what Ms. Hendrix was trying
10 to do, that she wanted to be able to solicit business for the
11 company. Is that right?

12 MS. PALMER: Yes, Your Honor, and there are actually
13 some emails that have been produced, or it may actually be in
14 Ms. Hendrix's evaluations, that reference her solicitation of
15 business as a job duty even as an inside worker.

16 THE COURT: All right. And so what have you
17 omitted, please, from the personnel documents that you have
18 produced for Mr. Segrest?

19 MS. BEDSOLE: I believe we produced his Workday
20 profile.

21 THE COURT: So no evaluations?

22 MS. BEDSOLE: Correct.

23 MS. PALMER: Your Honor, I have a copy of that if
24 you would like to look at it.

25 THE COURT: We will see. Maybe we'll get there.

1 Is it the plaintiff's position that Mr. Segrest is
2 the only comparator?

3 MS. PALMER: No, Your Honor. We have asked for
4 personnel files from the entire team and actually the entire
5 department, and the issue there is because job titles appear
6 to not matter; and that's part of our claim, is that
7 Ms. Hendrix was initially an account executive and at some
8 point received a title change, or they call it a promotion, to
9 inside broker.

10 At the time that she received the title change to
11 inside broker, her account executive duties actually increased
12 instead of decreased, and she was doing more secretarial-type
13 work versus broker-type work, and so that's part of our whole
14 claim here.

15 And with regard to the pay structures and the bonus
16 structures, because there is no procedure in place to
17 determine what percentage is given to who, it's necessary to
18 look outside of Mr. Daugherty's team into the rest of the
19 department to see how they are divvying up their bonuses and
20 their compensation, because it seems to be controlled under
21 the umbrella of the professional liability department and it's
22 left to, it seems, like each individual team leader to divvy
23 out the percentages.

24 And so that's part of our claim here is that that
25 structure that's promoted by CRC has led to discriminatory

1 conduct in the pay structures and the bonus structures of the
2 females within the department.

3 So we've produced a list of specific team members
4 and specific department members that we believe we're entitled
5 to the personnel files for. And if there is an issue with
6 health information or anything like that, I do believe it's
7 covered under the Court's protective order. But to date, all
8 we have received is the Workday printout for Mr. Segrest. We
9 do have evaluations for Mr. Segrest -- not the....that's
10 correct.

11 And I believe Ms. Bedsole may be mistaken. We have
12 not received any for Mr. Daugherty. There has been no
13 production related to Mr. Daugherty.

14 And with regard to plaintiff's personnel file, we
15 don't appear to have the Workday printout for plaintiff. We
16 have portions that show the documents that she signed, like
17 the handbook, but comparing her personnel file to
18 Mr. Segrest's personnel file, they're not the same, and that's
19 why we have continued to ask for hers as well.

20 We don't know what's maintained in this Workday
21 system. We don't know what's maintained in any kind of paper
22 file, and that's why we've asked. We even offered to go and
23 review some of the files in person to see if there was some
24 agreement that we could come to with regard to that. But we
25 have provided specific names of individuals we believe that we

1 are entitled to their information, at the very least the
2 account executives that Ms. Hendrix once was, before she was
3 promoted, to show if they complained or if they were aware of
4 her complaints and they had discussions and what types of
5 disciplinary actions they received, what types of
6 commendations they received, their bonus structure.

7 We have instances where account executives are
8 receiving enormous bonuses compared to brokers, and I believe
9 it's necessary to review the personnel files of these
10 individuals to determine what's the course there, what's
11 happening.

12 THE COURT: So, something that caught my eye when I
13 was reviewing the complaint -- and I apologize. I can't
14 remember everything we discussed back in June, so you may have
15 to refresh my memory on some of this, please.

16 There are allegations in the complaint about leads
17 for potential customers being shared among male brokers. And
18 I can't remember the two formats that were used for that
19 information sharing.

20 Have you received any documents with respect to
21 that? And for the record, put on the record, please, the two
22 ways in which that information allegedly was shared with male
23 employees.

24 MS. PALMER: Yes, Your Honor. I believe the ways
25 you're referencing are through possibly an iChat, which may

1 have been on personal cell phones, so we may not have that
2 information, but also email distribution lists that existed
3 with any Outlook program.

4 We haven't received any of that information. There
5 was a response to the interrogatories that identified the one
6 email distribution list that the plaintiff was on, but
7 plaintiff is aware and has identified others and we don't know
8 where those are, if they exist, if they were deleted, what
9 happened to those, because nothing has been produced in
10 relation to that.

11 THE COURT: What do you say on that, Ms. Bedsole?

12 MS. BEDSOLE: Your Honor, we have asked for this
13 texts or iChats and they don't have any documents with respect
14 to the personal -- they don't have any documents for personal
15 cell phones. But they have asked for those.

16 With respect to the email distributions, the emails
17 that we have produced, they are listservs within the
18 department, so it includes Ms. Hendrix on these emails about
19 who is coming to dinner and who wants to go to dinner and the
20 people that are invited to dinner. So we have produced that.

21 We have not been able to locate a different listserv
22 or a different group in which only males. The distributions
23 that we have seen and produced include the entire team,
24 identifying who is coming to town and who is having dinner,
25 where they are having dinner and what times.

1 THE COURT: And who has been looking for that
2 information for CRC, please, Ms. Bedsole?

3 MS. BEDSOLE: We have been working with their
4 e-discovery team, Your Honor.

5 THE COURT: My initial reaction -- and I'm happy to
6 receive everyone's thoughts on this -- is that it seems like
7 maybe a way to cut to the chase on some of this -- because I
8 understand the plaintiff's position about why they need the
9 breadth of discovery that the plaintiff's team has requested,
10 and I understand the defendant's position about this is
11 extremely broad discovery and there's reluctance to respond to
12 all of the requests.

13 It seems to me that if a 30(b) (6) deposition was
14 taken and a deposition was taken of a representative of the
15 e-discovery team to try to learn more about how CRC is
16 organized, get just some preliminary information to help start
17 connecting the dots among all the emails and what you have
18 received in paper discovery, help understand what kind of
19 electronic information is available, what has been searched,
20 what hasn't been searched yet, that might be really helpful.

21 I understand that in terms of sequencing, you're
22 always going to want to have as many documents ahead of a
23 30(b) (6) deposition as possible, but this may be a situation
24 where it makes sense to have an initial 30(b) (6) deposition.

25 After the 30(b) (6) deposition, plaintiff may be in a

1 better position to narrow discovery requests. Defendant can
2 then consider those narrow discovery requests. And once you
3 all see whether you can reach any kind of agreement on
4 discovery requests after those two depositions, once
5 additional documents if any are produced, if there was a need
6 to resume the 30(b) (6) deposition to examine the witness about
7 documents that are produced after that deposition, I would
8 suggest that the defendant consider that request.

9 If you all can't reach an agreement on that, we
10 could have a conversation to try to work through that.

11 But it seems there's a certain amount of just kind
12 of shooting in the dark right now that maybe isn't terribly
13 productive.

14 What is your reaction to that, Ms. Palmer or
15 Ms. Wilkinson?

16 MS. WILKINSON: Your Honor, I think that's a great
17 idea. I would just ask one thing; that the 30(b) (6) either
18 not count against our total number of depositions or that this
19 just be one topic in our total 30(b) (6) list of examinations
20 so that we don't lose a deposition by doing it.

21 But I think that is a great idea. And could we
22 expand that not only just to e-documents or e-discovery, but
23 anybody that has information about how paper documents are
24 stored in addition to electronic documents.

25 THE COURT: Which I would think that's something

1 that would make sense to ask of the 30(b) (6) representative.
2 And I was thinking of two depositions, one of a 30(b) (6)
3 representative and one of someone on the e-discovery team.
4 That probably isn't going to be the same person, I would
5 imagine.

6 But that's my initial take on how you understand the
7 scope of what's available and maybe what is really going to be
8 helpful to Ms. Hendrix attempting to prove her allegations as
9 opposed to casting perhaps an unnecessarily broad net. I
10 don't know yet whether the requests that are out there right
11 now are unnecessarily broad.

12 Ms. Bedsole, what are you thoughts, please?

13 MS. BEDSOLE: Your Honor, we are amenable. And when
14 we talked on the 19th of January after the filing of the
15 motion to compel, we did set aside the week of March 6th,
16 which is why we sent the plaintiff's deposition notice. So
17 we've already set aside some time to take depositions.

18 MS. WILKINSON: Your Honor, may we do the 30(b) (6)
19 before the plaintiff's deposition so we can see what is out
20 there, try to resolve these discovery issues before we move
21 forward with anything else; just as an initial, these two
22 people about the documents?

23 THE COURT: What do you say, Ms. Bedsole?

24 MS. BEDSOLE: I don't have a problem with that, as
25 long as -- I mean, we can talk about this. But we have set

1 aside that week. I would like to go ahead if we can and keep
2 that week. I've got an arbitration going in Fort Lauderdale
3 the beginning of April.

4 THE COURT: I'm thinking y'all probably aren't going
5 to meet the discovery deadline and that you're going to be
6 asking for some additional time. I understand that. Better
7 to get this work done than to be maybe scheduling more
8 depositions than you need. So I think this initial work will
9 hopefully help everyone get a better sense of what information
10 is available and what information really is going to be
11 pertinent.

12 All right. Thank you all for agreeing to proceed in
13 this way.

14 MS. PALMER: Your Honor, if I may, what is the
15 Court's preference with regard to the personnel files and what
16 we do regarding the scope of those? Because that is an issue
17 that I believe even in our meet and confers where we're just
18 not going to agree on the scope of discovery with regard to
19 whether it's just Mr. Segrest or the entire team or the entire
20 department.

21 And then we also have an issue with the defendant's
22 privilege log and I'm not sure what the Court's preference is
23 with regard to taking up that issue.

24 THE COURT: My thoughts with respect to the
25 personnel files is that once you understand better the

1 structure of CRC from the defendant -- I know Ms. Hendrix has
2 given you information about that -- I anticipated that you
3 might have a better sense of who is a comparator under the
4 Lewis decision, which I think is going to have to guide your
5 analysis there.

6 The Eleventh Circuit, I think, gave some pretty
7 clear parameters about who is and who isn't a comparator. You
8 all may feel like there's other case law out there that helps
9 inform that analysis. But I think that's at least a good
10 starting point.

11 So, again, my thought was that after the 30 (b) (6)
12 deposition, you at least would have information from a
13 spokesperson for CRC that would allow you to come back, if you
14 all can't agree, allow you to come back and say, well, the
15 company representative explained this; therefore, we believe
16 these people, even though their titles are different -- which
17 is what I'm hearing, I think -- their job responsibilities are
18 effectively the same, and they do count as comparators; that's
19 why we've asked for their personnel information.

20 The defendant, understandably, may not see things
21 eye to eye, and we will just have to see if we can get to the
22 bottom of that. Does that make sense?

23 MS. PALMER: Yes, Your Honor.

24 THE COURT: Tell me the privilege log issue, please.
25 I had not gotten to that, so you're writing on a blank slate.

1 MS. PALMER: Your Honor, that's a new issue. We
2 received an updated privilege log after --

3 MS. BEDSOLE: Your Honor, it's a new issue. This is
4 the first time I have heard about it, so I would really prefer
5 that we try to meet and confer.

6 MS. PALMER: That's fine. We can do that. I just
7 didn't know what the Court's preference is, but we can try to
8 address that with each other.

9 THE COURT: It sounds like you guys likely are going
10 to have a busy month just getting ready for the depositions
11 that you have, that you are going to have to be talking to be
12 able to coordinate.

13 It sounds like there were some gaps in communication
14 in part because of Ms. Hendrix having to address her health
15 concerns. I would anticipate that those gaps will disappear
16 in the next month while you all are marching towards these
17 depositions.

18 If you run into problems, please do not file 30-page
19 written submissions. Send a joint email to our chamber's
20 address, we will set up a phone call, and let's just talk and
21 see if we can get to the bottom of it.

22 Of course, consistent with the information in the
23 Court's scheduling order, if after a conversation the parties
24 feel they need to file something to preserve the record, the
25 Court is never going to prohibit you from doing that. I just

1 find that as a matter of efficiency, for everyone, we can
2 usually solve most problems with a good conversation. So
3 let's work toward that, please.

4 I will be curious to hear what y'all learn in these
5 depositions, and we will go from there.

6 Anything else we can discuss today to help you all
7 move towards depositions?

8 MS. WILKINSON: I don't think so. Just to be clear,
9 Your Honor, we are going to do our -- it sounds like full
10 30 (b) (6) first.

11 THE COURT: It's a 30 (b) (6) that allows you to get
12 the information you need about the organizational structure,
13 all of that background information that allows you to try to
14 see who the comparators are, who may be -- there's a lot
15 alleged in the complaint, so it is broad by nature of the
16 broad allegations in the complaint.

17 It may be that after a 30 (b) (6) deposition,
18 Ms. Hendrix decides that she maybe needs to narrow some of her
19 factual allegations that form the basis of her claims for
20 discrimination and retaliation; maybe not.

21 But, yes, the 30 (b) (6) is a pretty broad 30 (b) (6)
22 deposition, but it's meant to help you ultimately narrow, if
23 possible, discovery requests and the number of employees who
24 may need to become part of discovery because the plaintiff has
25 a sound footing for arguing that they are comparators. It

1 allows you all to understand what personnel material is
2 available so that you can say what you have, what you don't
3 have, what you believe you legitimately need for discovery.
4 And Ms. Bedsole and Ms. Wunderlich can take their positions
5 about what they think is relevant from their perspective.
6 Does that --

7 MS. WILKINSON: It does. And I just wanted to make
8 sure that if we do this and we find there are more documents
9 that we need and we have a phone conference with the Court,
10 can we --

11 THE COURT: After you talk to each other and you
12 haven't been able to agree.

13 MS. WILKINSON: Correct, absolutely. Then would we
14 get more time to then schedule depositions once we have
15 documents?

16 THE COURT: Correct, yes. That's the whole point of
17 the exercise. That would work out really well if everything
18 falls into place that way.

19 MS. WILKINSON: Thank you, Judge.

20 THE COURT: Anything else for the defendant?

21 MS. BEDSOLE: No, Your Honor.

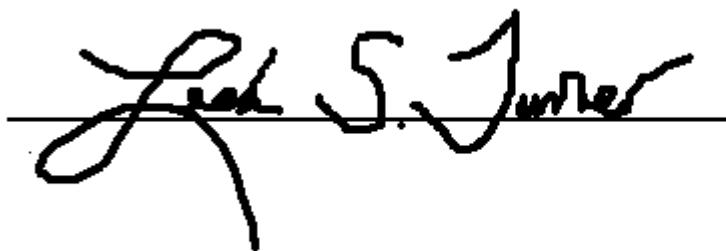
22 THE COURT: Thank you all for being here. I hope
23 y'all have a great week.

24 (End of proceedings.)

25

C E R T I F I C A T I O N

I hereby certify that the foregoing transcript in the above-styled cause is true and accurate.

A handwritten signature in black ink, appearing to read "Leah S. Turner", is written over a horizontal line.

**Leah S. Turner, RMR, CRR
Federal Official Court Reporter**